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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 2nd MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Tuesday, 16 June 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

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The meeting was called to order at 3.20 p.m.

ORGANIZATION OF WORK

1. **The CHAIRMAN** said that the Bureau proposed that the following working groups should be established: a Working Group on General Principles of Criminal Law, under the chairmanship of Mr. Saland (Sweden), to consider Part 3 of the draft Statute; a Working Group on Procedural Matters, under the chairmanship of Ms. Fernández de Gurmendi (Argentina), to consider Parts 5, 6 and 8; a Working Group on Penalties, under the chairmanhip of Mr. Fife (Norway), to consider Part 7; a Working Group on International Cooperation and Judicial Assistance, under the chairmanship of Mr. Mochochoko (Lesotho), to consider Part 9; and a Working Group on Enforcement, under the chairmanship of Ms. Warlow (United States of America), to consider Part 10.

2. *It was so decided.*

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1)

Article 26

3. **Mr. SALAND** (Sweden), Coordinator for Part 3, introducing article 26 on the age of responsibility, said that the issue was complicated by the fact that the age of responsibility varied a great deal from one country to another. Furthermore, in some countries there was a "span" in the later youth years where there was a rebuttable presumption in one direction or the other, or latitude for the courts to determine responsibility depending on maturity, insight into wrongfulness, etc. Constitutional problems also arose in some countries. From earlier discussions it appeared that it would be easier to agree on a higher age, possibly 18. An interesting suggestion had been to treat the matter not as a responsibility issue but as a jurisdictional one, leaving national legal systems intact, so to speak. It would simply be stated that the International Court would have no jurisdiction over persons under such and such an age. In order to ascertain the prevailing view of the Committee as a guide to discussion in the working group, he would suggest that delegations should merely indicate their preferences, rather than describing their countries' practices.

4. **Ms. WILMSHURST** (United Kingdom) expressed strong support for the "solution" just suggested and proposed stating simply that the Court should have no jurisdiction over persons under the age of 18 at the time of the alleged commission of a crime. That would not prejudice any country's position with regard to the age of responsibility.

5. **Ms. WONG** (New Zealand) said that it was inappropriate for the Court to have jurisdiction over minors, which would require provision for a separate juvenile justice system under the Statute. Supporting the United Kingdom proposal, she stressed that it would not mean that the crimes committed by children would go unpunished or become legalized, but would simply leave national systems intact and enable the limited resources of the Court to be directed towards those who were not minors.

6. **Mr. SADI** (Jordan) said that the Convention on the Rights of the Child stipulated that children were to be accorded a separate judicial system but did not discuss criminal responsibility. Given the number of people

under 18 being recruited or forced into military service in many countries and the mass murders being committed by them, saying that they were not accountable could open the door to abuse.

7. **Mr. CORTHOUT** (Belgium), supporting the proposal that the Court should not have jurisdiction over persons under the age of 18, said that the Court's jurisdiction must be confined to the most essential and important crimes, which would probably not be committed by children.

8. **Mr. VERGNE SABOIA** (Brazil) said that, in view of Brazilian legislation and the provisions of the Convention on the Rights of the Child, his delegation was in favour of establishing 18 as the minimum age for responsibility, and of excluding jurisdiction for persons under that age.

9. **Mr. SLADE** (Samoa) said that the type of provision proposed by the United Kingdom was one which Samoa had consistently supported. His delegation did not think that the Court would be equipped to deal with children.

10. **Mr. POLITI** (Italy) said that his delegation had noted the increasing support in the Preparatory Committee for setting the age of criminal responsibility at 18 years, and favoured that approach for reasons of consistency not only with the principles enshrined in the Convention on the Rights of the Child but also with the essentially punitive rather than rehabilitative function of the Court. The proposal to resolve the problem by treating it as a jurisdictional matter warranted consideration. He drew attention in that connection to footnote 3 to article 75 of the draft Statute (A/CONF.183/2/Add.1).

11. **Ms. ASSUNÇÃO** (Portugal), endorsing the comments of the representatives of the United Kingdom, New Zealand, Brazil and Italy, said that in the light of the Beijing Rules and other international instruments, persons under the age of 18 should be excluded from the jurisdiction of the Court.

12. **Ms. GARTNER** (Austria) said that her delegation had difficulties with the concept of 18 years as the age of responsibility, and that treatment of the issue as a jurisdictional matter did not help much. Many of the crimes in question were committed by persons under the age of 18. Her delegation would favour establishing the age of criminal responsibility at 16, with a rebuttable presumption as to the maturity of those concerned for persons between 16 and 18.

13. **Ms. FLORES** (Mexico) considered that the right age for criminal responsibility was 18, and supported the proposal to state simply that the Court would have no jurisdiction over minors under that age. A clause could be added to make clear that that was without prejudice to domestic legislation.

14. **Mr. HARRIS** (United States of America) shared Austria's concern about excluding younger offenders from the jurisdiction of the Court because of recent experience showing to what extent young people were involved in committing the serious crimes covered by the Statute. From a practical point of view, the Prosecutor would in many cases have to prosecute lower-level persons in order to obtain their cooperation in seeking out those who had directed and orchestrated the atrocities, and that might prove very difficult if persons under the age of 18 were being categorically excluded from prosecution by the Court. Should there be no consensus on the type of provision proposed by Austria, however, and in view of the time constraints, his delegation could accept a provision along the lines of that proposed by the United Kingdom, but would not wish to see the age of responsibility set any higher than 18.

15. **Mr. PEREZ OTERMIN** (Uruguay) said that his delegation considered 18 years to be the right age for criminal responsibility. Although the criminal activities of minors under that age had risen very considerably, he

agreed with the representative of New Zealand that that should not fall within the jurisdiction of the Court but should be left to national jurisdiction and legislation.

16. **Mr. GUARIGLIA** (Argentina) agreed that the Court should not have jurisdiction over minors under 18 years of age. The exclusion of persons under the age of 18 from the Court's jurisdiction would be a practical way of resolving the difficulties that had arisen in the Preparatory Committee, and the age of 18 did have some international status since it was the age ceiling specified in article 1 of the Convention on the Rights of the Child. It would be difficult to reach agreement on a lower limit.

17. **Mr. AGIUS** (Malta) agreed with previous speakers that 18 should be considered the age of criminal responsibility and that minors under that age should be excluded from the jurisdiction of the International Criminal Court.

18. **Ms. FRANKOWSKA** (Poland) said that her delegation joined others in endorsing the United Kingdom's statement, favouring the proposal to treat the issue as a jurisdictional one and considering that 18 would be the right age.

19. **Mr. STROHMEYER** (Germany) endorsed the views expressed by the delegations of the United Kingdom, New Zealand and Argentina. The Court's purpose was to try the main perpetrators and instigators of crimes, and it was not fully equipped to deal with juvenile offenders. He agreed that the relevant age should be 18 years.

20. **Mr. STIGEN** (Norway) said that his delegation supported the proposal put forward by the United Kingdom.

21. **Mr. KELLMAN** (El Salvador), supported the United Kingdom delegation's statement. The Court should have no jurisdiction over minors under 18 years of age and should leave national law to deal with any children who committed crimes of the kind in question.

22. **Mr. KOFFI** (Côte d'Ivoire) expressed his preference for an age "span". He was well aware that children—some very young—were sometimes used for activities of the kind covered by the Statute, but the primary responsibility then lay with the adults who made use of those children. While he noted with interest the possibilities mentioned by the representative of Sweden, he would favour the text contained in proposal 2 under article 26 of the draft (A/CONF.183/2/Add.1).

23. **Mr. AL-CHEIKH** (Syrian Arab Republic) said that his delegation considered that 18 was the right age for criminal responsibility. National legal systems varied in regard to the minimum age of responsibility and penalties for juveniles according to their age. Since international instruments such as the Convention on the Rights of the Child and the Beijing Rules laid down special provisions for minors, the Court should have no jurisdiction over such persons. The Prosecutor would then not need to prove that persons under 18 were aware of the implications of their acts.

24. **Mr. IMBIKI** (Madagascar) thought that 18 years should be the age of criminal responsibility, meaning absolute responsibility. However, between the ages of 16 and 18 a perpetrator could be considered as having either "absolute" irresponsibility (and hence not being liable for prosecution) or "relative" irresponsibility, meaning that it was for the Prosecutor to assess whether the alleged perpetrator was able to understand the implications of the crime committed and therefore liable to prosecution.

25. **Ms. SUCHAR** (Israel) said that a distinction needed to be drawn between responsibility and sentencing. Young people aged 16 were well aware of the wrongfulness of the kinds of crime in question, and the age of responsibility should therefore be 16 so that adults could not take advantage of them and use them to commit such crimes. However, young people between the ages of 16 and 18 should be subject to more lenient penalties than those imposed on adults.

26. **Mr. AL ANSARI** (Kuwait) suggested that a comparative table showing the age of responsibility in different States should be produced to give delegations a clearer idea of the situation in different countries. With reference to paragraph 1 under proposal 1, the final clause in square brackets concerning proof that the person knew the "wrongfulness" of his or her conduct was imprecise and would be best deleted.

27. **Mr. KERMA** (Algeria) said that the age of criminal responsibility in his country was 18 and his delegation therefore supported the idea that the Court should not have jurisdiction over persons under that age.

28. **Mr. NIYOMRERKS** (Thailand) said that his delegation considered that maturity could vary from one person to another, and that whoever committed a serious crime under the jurisdiction of the Court should be convicted and sentenced, with special consideration and mitigation being accorded in the case of a minor. In the interests of avoiding controversy and saving time, however, it would accept the proposal that the Court should not have jurisdiction over minors under 18 years of age.

29. **Mr. ONWONGA** (Kenya) said that there seemed to be an emerging consensus that 18 years should be the age fixed, a position he supported because persons below that age might not be acting with full intent and might be under the influence of others, who should be held responsible.

30. **Mr. Tae-hyun CHOI** (Republic of Korea) thought that the age of criminal responsibility should be 18. However, some procedure was needed in the case of crimes committed by minors under the age of 18, different from the procedures applied to adult criminals. The Israeli delegation had rightly drawn attention to that issue. The Court could hardly deal with all child criminals, but a solution might lie in giving the Prosecutor discretion.

31. **Mr. SHARIAT BAGHERI** (Islamic Republic of Iran) said that his delegation was in favour of establishing the age of 18 as the age of criminal responsibility, but suggested that, in exceptional circumstances, the Court should be competent to punish persons aged between 15 and 18 who were aware that their behaviour was wrongful. The lower limit should not, however, be below 15 years of age.

32. **Mr. KROKHMAL** (Ukraine) expressed support for the United Kingdom proposal. Treating the matter as a jurisdictional one would be an elegant solution to the problem. However, the relevant provision could perhaps be placed in Part 2 of the Statute, concerning jurisdiction.

33. **Mr. KAMBOVSKI** (The former Yugoslav Republic of Macedonia) fully supported the principle of excluding persons under the age of 18 from the jurisdiction of the Court, in view of the differences between legal systems and the need, if the Court's jurisdiction over minors was accepted, to include many special substantive and procedural provisions in the Statute, in accordance with the Convention on the Rights of the Child and other international instruments.

34. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) said that the exclusion of minors under 18 years of age from the jurisdiction of the Court would be the most appropriate approach. The age of 18 was consistent with the definition

in article 1 of the Convention on the Rights of the Child. Minors under 18 years of age did indeed commit serious crimes, but there were domestic courts to deal with such cases.

35. **Mr. AL-JABRY** (Oman) said that, although it was true that children were engaged in military activities and use was made of them to commit war crimes, it was those who had command over them who should be responsible for such acts. His own country's legislation had special provisions applicable to juvenile offenders. His delegation considered that the age for criminal responsibility should be 18.

36. **Mr. PIRAGOFF** (Canada) said that the proposal of the United Kingdom to treat the issue as a jurisdictional rather than as a responsibility issue would overcome the many difficulties arising out of differences between legal systems and would enable the debate to be refocused. His delegation associated itself with that proposal.

37. **Mr. HAMDAN** (Lebanon) said he shared the views of those who favoured excluding minors under the age of 18 from the Court's jurisdiction. The Court's absence of jurisdiction over minors would not affect the responsibility of juvenile offenders under national legislation. The question of responsibility was distinct from that of the jurisdiction of the Court. He agreed that it would be difficult to reach consensus on wording that would cover all cases of children under the age of 18. He stressed the need for consistency with the various international instruments.

38. **Mr. HERSI** (Djibouti) endorsed the proposal that the Court should not have jurisdiction over persons under the age of 18.

39. **Mr. SADI** (Jordan) thought that the reference to the age of responsibility in article 26 should be deleted and that the matter should be treated as a jurisdictional issue. The wording of the article should be confined to a simple statement to the effect that the Court would not have jurisdiction over a crime committed by a person under the age of 18.

40. **Mr. SKIBSTED** (Denmark) said that he agreed with the majority view that the age limit should be set at 18 years.

41. **Mr. PENKO** (Slovenia) noted that although many delegations were in favour of setting the age limit at 18, some delegations preferred a limit of 16. Taking into account draft article 9 on the acceptance of the jurisdiction of the Court, a compromise solution might be to provide for the Court to have no jurisdiction over juveniles under 16 years of age, and in article 9 allow States parties to lodge a declaration which would mean that for them the age of responsibility was 18 years.

42. **Mr. SAENZ DE TEJADA** (Guatemala) agreed that the Court should have no jurisdiction over crimes committed by minors under the age of 18, and supported the United Kingdom proposal.

43. **Mr. DIAZ PANIAGUA** (Costa Rica) said he did not think that the suggested addition to article 9 would solve the problem. Costa Rica was inclined to favour the United Kingdom proposal, leaving cases of minors under the age of 18 to domestic legal systems, but the Court should be able to intervene when such systems were ineffective.

44. **The CHAIRMAN**, summing up the debate, said that there was a wide diversity in State practice with regard to the age of criminal responsibility and in delegations' preferences regarding article 26. In view of the difficulties, there had been support for the proposal to exclude persons under 18 from the jurisdiction of the Court. Some delegations had disagreed with that idea, but the working group now had a basis for further discussion.

Article 27

45. **Mr. SALAND** (Sweden), Coordinator for Part 3, introducing article 27 ("Statute of limitations"), drew attention to the many different proposals contained in the Preparatory Committee's draft. The fundamental question, in the case of the "core" crimes, was whether a statute of limitations was to be included or not. The majority view seemed to be that there should be no statute of limitations for core crimes, though the picture was more diverse if jurisdiction were to extend to other crimes such as those known as "treaty" crimes.

46. **Mr. IMBIKI** (Madagascar) said he understood the agreed approach to be that the Court's jurisdiction should come into play only when national jurisdictions were unable or unwilling to judge cases. Practices regarding the statute of limitations varied, and in order to be able to take a decision on the question of a statute of limitations it might be necessary first to decide which matters would fall within the purview of the International Criminal Court.

47. **Ms. LE FRAPER DU HELLEN** (France) said that her delegation considered that there should be no statute of limitations for genocide and crimes against humanity, but that a limitation period—perhaps of 10 or 20 years—would be appropriate for war crimes as they were defined in the draft Statute. France had been responsible for the proposal given as proposal 4 in the draft text for article 27, but was flexible and thought that proposal 4 could perhaps be combined with proposal 1. She agreed that it was important to bear in mind the complementarity between the Court and national jurisdictions.

48. **Mr. Tae-hyun CHOI** (Republic of Korea) said that, given the grave nature of the core crimes, his delegation considered that there should be no statute of limitations, and accordingly supported proposal 2. However, a statute of limitations would be necessary for offences such as those covered by article 70.

49. **Mr. AL-CHEIKH** (Syrian Arab Republic) said that crimes against humanity, which caused lasting suffering and lingered on in the memories of succeeding generations, should not be subject to time limitation. Whether or not such crimes were covered by a statute of limitations in national legislation, the Statute of the Court should maintain the right of humanity to prosecute the perpetrators, irrespective of the principle of complementarity.

50. **Mr. YAMAGUCHI** (Japan) said that his delegation would not insist on a statute of limitations, but believed that there should be a safeguard such as that provided for in proposal 3, to protect the rights of the accused to a fair trial.

51. **Mr. MANSOUR** (Tunisia) said that the Geneva Conventions emphasized the importance and seriousness of crimes against humanity, war crimes and genocide. Such crimes should not be subject to any statute of limitations.

52. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said that all the crimes which fell within the jurisdiction of the Court were serious crimes that should not be subject to a statute of limitations. Her delegation therefore favoured proposal 2. There should, however, be no confusion between crimes falling under national and international jurisdiction.

53. **Mr. VERGNE SABOIA** (Brazil) said that, although Brazilian criminal legislation provided for varying limitation periods for different crimes, Brazil could accept the proposal that there should be no statute of limitations for crimes within the inherent jurisdiction of the Court.

54. **Mr. RIORDAN** (New Zealand) said that, as had been pointed out, the crimes in question were very serious ones. Moreover, they were often committed by persons who might, for example, be State officials and therefore

have a unique capacity to suppress evidence. Since the purpose of the Court was to put an end to impunity, New Zealand considered that there should be no statute of limitations.

55. **Mr. QUIROZ PIREZ** (Cuba) said that limitation periods existed for procedural or even humanitarian reasons, but that they could not apply to the most heinous crimes. The principle of complementarity meant that, once a national court had handed down a decision against a person tried, the case could not then come to the International Criminal Court; when, however, a matter fell within the Court's jurisdiction, there could be no statute of limitations.

56. **Mr. AGIUS** (Malta) agreed that there should be no statute of limitations on the crimes within the jurisdiction of the Court, for the reasons given, in particular, by the New Zealand delegation.

57. **Mr. GUARIGLIA** (Argentina) expressed support for proposal 2. A single rule should apply to all crimes within the jurisdiction of the Court, without distinction.

58. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) said that the Statute dealt with a unique category of crimes, and that there should be no statute of limitations for such crimes, regardless of any of limitation periods in domestic legislation.

59. **Mr. KAMBOWSKI** (The former Yugoslav Republic of Macedonia) said that there should be no statute of limitations on the crimes within the jurisdiction of the Court, in accordance with the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

60. **Mr. AL AWADI** (United Arab Emirates) said that his delegation supported proposal 2, in view of the nature of the crimes in question. National law might provide for periods of limitation, but no limitation should apply to the International Court.

61. **Mr. AL ANSARI** (Kuwait) said that the crimes which fell within the purview of the Court constituted a threat to peace and there should be no statute of limitations for them. His delegation therefore favoured proposal 2.

62. **Mr. GOMEZ MENDEZ** (Colombia) said that his delegation supported proposal 2, because of the seriousness of the crimes in question.

63. **Ms. CONNELLY** (Ireland) said that the serious crimes under discussion did not include the offences covered by article 70. There should be no time limit on culpability in respect of the heinous crimes within the jurisdiction of the Court. Her delegation supported proposal 2. She was sympathetic to the view expressed by the representative of Japan that the accused's right to a fair trial should be safeguarded, but considered that that issue should be dealt with elsewhere than in article 27.

64. **Mr. NIYOMRERKS** (Thailand) said that his delegation also favoured proposal 2. The jurisdiction of the Court over core crimes should be universal.

65. **Mr. de KLERK** (South Africa) supported proposal 2 for the reasons given by other speakers. Swift justice was important, but that did not mean that a limitation period was justified. All States with statutes of limitations would do well to look at their statute books to avoid the danger of finding themselves without jurisdiction because of the effect of such limitations.

66. **Ms. TOMIĆ** (Slovenia) agreed that there should be no statute of limitations for the core crimes under the Court's jurisdiction, given the nature and gravity of those crimes.

67. **Ms. RAMOUTAR** (Trinidad and Tobago) said that her delegation supported proposal 2 and believed that there were sufficient safeguards within the Statute to take care of the rights of accused or suspected persons.

68. **Mr. SADI** (Jordan) supported the view that there should be no statute of limitations, but suggested that the need for speedy prosecution of persons charged with crimes should be taken into account by wording to the effect that every effort must be made to expedite the prosecution of persons charged with the commission of crimes under the Statute.

69. **Mr. ONWONGA** (Kenya) said that his delegation favoured proposal 2. As to whether an accused would have a fair trial, that would be dealt with in the first place by the Pre-Trial Chamber and then by the Prosecutor, who, at the end of his case, might ascertain whether there was evidence to proceed or not. The introduction of a statute of limitations would reward a criminal who went underground for a number of years to escape prosecution.

70. **Mr. FADL** (Sudan) expressed support for proposal 2.

71. **Mr. HU Bin** (China) said that he supported proposal 4 on the grounds that, whereas there should be no statute of limitations for crimes against humanity, genocide and the crime of aggression, war crimes were another matter; there should be a statute of limitations for violations of the laws of war.

72. **Mr. BALDE** (Guinea) said that one of the purposes of the International Criminal Court was to ensure that the most odious crimes did not go unpunished. It would be illogical to allow those who committed crimes against humanity to escape prosecution by the Court after the passage of a certain period of time. Proposal 2 was therefore the most appropriate one.

73. **Ms. FLORES** (Mexico) said that there should be no statute of limitations for such serious crimes as genocide, crimes against humanity and war crimes. There should be no distinction between war crimes and other core crimes within the jurisdiction of the Court.

74. **The CHAIRMAN**, summing up the debate, said that many delegations were opposed to a statute of limitations with respect to core crimes, although some distinguished between war crimes and other core crimes. While some delegations thought that the complementarity principle was relevant to the issue, others disagreed in view of the seriousness of the crimes in question. Related issues such as the need to ensure a speedy and fair trial had been raised, as had the point that offences under article 70 should be dealt with differently.

Articles 24 and 29

75. **The CHAIRMAN** recalled that, at the previous meeting, the Coordinator for Part 3 had proposed that articles 24 and 29 should be referred to the Drafting Committee, after a brief discussion if necessary. Could those articles now be referred to the Drafting Committee?

76. **Mr. SALAND** (Sweden), Coordinator for Part 3, said that he had proposed replacing the words "act [or omission]" in paragraph 2 (a) of article 29 by the word "conduct" and deleting paragraph 4 of that article.

77. **Ms. FLORES** (Mexico) said she thought that the question of deleting paragraph 4 of article 29 required further discussion.

78. **The CHAIRMAN** said that open questions would be referred to the working group.

79. **Mr. HARRIS** (United States of America) suggested that the Drafting Committee should consider whether the problem discussed in relation to "act or omission" in paragraph 2 (a) of article 29 also arose with regard to the term "physical elements" in paragraph 1 of that article. Secondly, the language of paragraph 2 (b) and paragraph 3 might be harmonized.

80. **The CHAIRMAN** said that those suggestions would be taken into account by the Drafting Committee.

81. **Mr. HAMDAN** (Lebanon) asked whether paragraph 4 of article 29 would go to the working group or the Drafting Committee.

82. **Ms. FLORES** (Mexico) said she took it that paragraphs 1, 2 and 3 of article 29 would go to the Drafting Committee and that the rest would be discussed in the working group.

83. **The CHAIRMAN** said that that was his understanding.

Part 1 of the draft Statute

84. **The CHAIRMAN** recalled that Part 1 had been introduced by the Coordinator of Part 1, Mr. Rama Rao (India), at the previous meeting.

85. **Mr. van der WIND** (Netherlands) confirmed his country's presentation of the candidacy of the city of The Hague as the seat of the International Criminal Court and expressed gratitude for the many expressions of support it had received, including that of its European partners. His Government reiterated its full commitment to doing everything in its power to serve as an effective host of the Court. Taking into account the support received and the fact that, to his knowledge, no other candidacies had been submitted, his delegation proposed that the candidacy of The Hague should be reflected in the text of article 3, paragraph 1, of the draft Statute.

86. **Mr. POLITI** (Italy) felt that Part 1 on the establishment of the Court could be forwarded to the Drafting Committee. Questions of substance would be resolved by the choices made under Parts 2, 11 and 12 of the draft Statute, and he stressed the importance of coordination between Part 1 and other parts. On article 2, Italy favoured an agreement between the Court and the United Nations rather than the integration of the Court into the United Nations system. The former option was consistent with provisions adopted in respect of other international jurisdictions and would better safeguard the independence of the Court. Italy also attached considerable importance to article 4, paragraph 2, on the status and legal capacity of the Court. Lastly, it thanked the Netherlands for offering The Hague as the seat of the Court.

87. **Ms. FERNANDEZ de GURMENDI** (Argentina) agreed fully with the previous statement and likewise thanked the Netherlands for its offer to host the future Court. With the appropriate addition to paragraph 1 of article 3, the whole part could be referred to the Drafting Committee.

88. **Mr. JENNINGS** (Australia) endorsed the statements made by the delegations of Italy and Argentina.

89. **Mr. AL-CHEIKH** (Syrian Arab Republic) said that his delegation also wished to see the reference to The Hague included in article 3 and the whole of Part 1 forwarded to the Drafting Committee, subject to some amendment to the wording of the first part of article 1 in the Arabic version, in which the term used for bringing persons to justice was too restrictive.

90. **Mr. GARCIA LABAJO** (Spain) agreed that Part 1 could now be referred to the Drafting Committee, but suggested the addition, at the end of the second sentence of article 1, of a reference to "other provisions" adopted in accordance with the Statute—an implicit reference to the Rules of Procedure and Evidence and the Regulations of the Court.

91. **Mr. MOCHOCHOKO** (Lesotho), welcoming the offer of the Netherlands to host the Court, agreed that Part 1 could now be forwarded to the Drafting Committee.

92. **Mr. SADI** (Jordan) suggested that the language of article 1 should be simplified and also that the words "and national" should be inserted before "concern".

93. **Mr. MANSOUR** (Tunisia) said he agreed with the delegation of the Syrian Arab Republic that the Arabic version of article 1 should be amended.

94. **Mr. CAFLISCH** (Switzerland), **Mr. EL MASRY** (Egypt) and **Ms. VEGA** (Peru) agreed that, with the inclusion of The Hague as the seat of the Court, Part 1 could be forwarded to the Drafting Committee.

95. **Ms. FLORES** (Mexico) said that some provisions called for further discussion. That morning, in connection with article 23, her delegation had proposed that article 1 should be amended to make it clear that the Court's jurisdiction extended only to individuals, or "natural persons". That article should not, therefore, be referred to the Drafting Committee until its scope had been determined. Furthermore, while she agreed that the reference to The Hague should be inserted in paragraph 1 of article 3, paragraph 3 of that article also called for further discussion, either in the Committee or in the working group.

96. **Mr. AL ANSARI** (Kuwait) agreed that the wording of the Arabic version of article 1 should be amended. He thanked the Netherlands for offering to host the Court in The Hague.

97. **Mr. SKIBSTED** (Denmark) advocated the referral of Part 1 to the Drafting Committee as it stood, and welcomed the offer by the Netherlands to host the seat of the Court.

98. **Mr. Tae-hyun CHOI** (Republic of Korea) said that there seemed to be an inconsistency between article 2, which spoke of approval by the States parties to the Statute, implying each and every State party, and article 3, paragraph 2, which spoke of approval by the Assembly of States Parties, implying a majority decision.

99. **Mr. AL AWADI** (United Arab Emirates) welcomed the offer by the Netherlands to host the seat of the Court in The Hague. Article 3, paragraph 3, should be made more explicit before being referred to the Drafting Committee. What exactly were the powers and functions which the Court might exercise on the territory of any State party?

100. **Ms. DASKALOPOULOU-LIVADA** (Greece) expressed the view that Part 1 as a whole was ready to be sent to the Drafting Committee. Her delegation would strongly oppose inserting the words "and national" in the phrase "crimes of international concern". National concerns were covered by the second part of the sentence, which

said that the Court would be complementary to national criminal jurisdictions. It was over crimes of international concern that the International Criminal Court should have jurisdiction.

101. **Ms. WILMSHURST** (United Kingdom) said that her delegation would be in favour of forwarding the whole of Part 1 to the Drafting Committee, subject to the completion of article 3, paragraph 1, as proposed. It would prefer to leave the question of a reference to individuals in article 1, as proposed by Mexico, open pending the final drafting of Part 3; that need not delay referral to the Drafting Committee. The Mexican delegation had not indicated what changes it wished in article 3, paragraph 3. In that same paragraph, the concern expressed by the United Arab Emirates might be met by inserting "in accordance with this Statute" or "under this Statute" to make it clear that the reference was to the powers given by the Statute. The point made by the Republic of Korea about the discrepancy between article 2 and article 3 was well taken. She assumed that it was the Assembly of States Parties that was intended in both cases, but perhaps the Drafting Committee might consider the matter and make an appropriate recommendation to the Committee of the Whole.

102. **Mr. MADANI** (Saudi Arabia) expressed support for establishing the seat of the Court at The Hague. With reference to article 3, paragraph 3, he agreed with the United Arab Emirates about the ambiguity of that paragraph, which should make clear how the Court might exercise its powers and functions on the territory of any State party.

103. **Mr. QUIROZ PIREZ** (Cuba) said that article 1 was closely related to the articles which defined the crimes within the jurisdiction of the Court. The phrase "the most serious crimes of international concern" would give rise to differences of interpretation, and should be amended to "the crimes laid down in the Statute" or "defined in the Statute". He also had misgivings about the vague wording of article 3, paragraph 3. The "powers and functions" and "special agreement" referred to needed to be specified.

104. **Ms. WILLSON** (United States of America) expressed support for the articles in Part 1 as currently drafted and amended to take account of the welcome offer by the Government of the Netherlands. The representative of the Republic of Korea had rightly drawn attention to a discrepancy between article 2 and article 3 which could be rectified by bringing the wording of the former into line with that of the latter. The proposal to add a reference to "other provisions" deriving from the Statutes at the end of article 1 warranted careful examination; any such additional provisions would perhaps need to be spelt out.

105. **Mr. NIYOMRERKS** (Thailand) expressed support for the establishment of the seat of the Court in The Hague.

106. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) said that Mexico's request for the inclusion of a reference to individuals in article 1 was appropriate, but the matter could be left pending until the finalization of Part 3. Cuba, too, was right in stating that the crimes referred to in that article were those laid down in the Statutes and that the current wording might give rise to difficulties, but that was a drafting matter, as was the reference to States parties in articles 2 and 3. Article 3, paragraph 1, should be completed by the reference to The Hague, Netherlands, and note should be taken of the proposal by Spain to add a reference to provisions deriving from the Statutes at the end of article 1. Subject to those drafting points, Part 1 was ready for referral to the Drafting Committee, with the exception of article 3, paragraph 3, on which Mexico had expressed concerns and the United Kingdom had made a proposal.

107. **Mr. AL-CHEIKH** (Syrian Arab Republic) said he shared the concerns of the United Arab Emirates about article 3, paragraph 3. The title of the article was "Seat of the Court": if what was meant by paragraph 3 was that the Court could hold sessions in a State party, that should be spelt out, but if it was a question of exercising powers

and functions in general, they should be specified and included in the appropriate part of the Statute. Article 1 was unduly wordy, and unnecessarily restated what was already in the preamble. It would suffice to say that the Court had the power to bring persons to justice for crimes committed under the Statute.

108. **Mr. DRONOV** (Russian Federation) endorsed the proposed addition to article 3, paragraph 1, to reflect the generous offer of the Netherlands to host the Court. Only minor problems remained to be settled in respect of Part 1, which could soon be referred to the Drafting Committee. Article 1 had the merit of having been worded in such a way as to be applicable irrespective of the final decision on Part 3, but he would see no difficulty in amending it subsequently to take account of such a decision. The point made by the Republic of Korea was well taken; the reference in both cases should be to the Assembly of States Parties. Any ambiguity in the wording of article 3, paragraph 3, could be clarified by adding the words "in accordance with this Statute" after "State Party".

109. **Mr. CHERQUAOUI** (Morocco) said he shared the views of previous speakers on the need to amend the Arabic version. He would also prefer the crimes referred to in article 1 as being "of international concern" to be specified in order to avoid any misinterpretations. With regard to article 3, paragraph 3, he likewise agreed that clarification was needed as to whether the Court's exercise of its powers and functions referred to the holding of sessions in other States parties or had some other meaning.

110. **Mr. PALIHAKKARA** (Sri Lanka), while agreeing that the text of Part 1 should be sent to the Drafting Committee as soon as possible, with the relevant amendment to article 3, paragraph 1, concerning the seat of the Court, expressed support for Cuba's suggestion that the crimes mentioned in article 1 should be specified by reference to the Statute. He further supported the United Kingdom's suggestion to clarify article 3, paragraph 3, by adding "in accordance with this Statute", although that paragraph was perhaps out of place under article 3 and might be more appropriately inserted under article 4 or as a separate paragraph.

111. **Ms. WONG** (New Zealand) thought that article 2 (subject to the replacement of "States Parties" by "Assembly of States Parties"), article 3, paragraphs 1 and 2, and article 4 could be referred to the Drafting Committee, leaving only article 1 and article 3, paragraph 3, to be debated further.

112. **Ms. FRANKOWSKA** (Poland) felt that Part 1 was ready to be forwarded to the Drafting Committee. Perhaps article 3, paragraph 3, should be placed after article 4.

113. **Mr. TRAN VAN DO** (Viet Nam), endorsing the proposal to establish the seat of the Court in The Hague, said that he was in favour of leaving article 3, paragraph 3, as it stood.

114. **The CHAIRMAN**, summing up the discussion, said that, although most delegations seemed to feel that Part 1 as a whole should be referred to the Drafting Committee, that view was not shared by all delegations. There appeared to be agreement that, subject to the addition of the reference to The Hague, article 3, paragraph 1, could be referred to the Drafting Committee, as could article 4, and also article 2 and article 3, paragraph 2, in which the question raised did indeed appear to be merely a drafting matter. Positions were evidently divided on article 1 and article 3, paragraph 3, between those who considered that they were settled in substance and could be finalized by the Drafting Committee and those who felt that substantive questions remained to be resolved. He therefore suggested that interested delegations should discuss those issues informally without delay. If those contacts were successful, those matters could then also be referred to the Drafting Committee; if not, it might be necessary to refer the issues to a working group.

The meeting rose at 6.15 p.m.